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Beyond the perimeter: non-qualifying payment stablecoins under U.S. and EU law

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I. Introduction

The Guiding and Establishing National Innovation for U.S. Stablecoins Act (the "GENIUS Act" or the "Act"), enacted on July 18, 2025, establishes a federal framework for certain dollar-referenced payment tokens, covering important questions such as: who may issue a "payment stablecoin" in the United States (the "U.S."); what reserves must stand behind it; and how issuers are supervised.[1] Much of the commentary on the Act has focused on the tokens and the issuers subject to it. This chapter examines the other side of the line: the stablecoins not covered by the Act; and the legal regimes that continue to govern them in the U.S. and the European Union (the "EU").

Two defined terms determine the Act's coverage. A "payment stablecoin" is a digital asset (i) that is, or is designed to be, used as a means of payment or settlement, (ii) whose issuer is obligated to convert, redeem, or repurchase it for a fixed amount of monetary value, and (iii) whose issuer represents, or creates the reasonable expectation, that it will maintain a stable value relative to that fixed amount.[2] A "permitted payment stablecoin issuer" ("PPSI") must be "a person formed in the United States" that is either a subsidiary of an insured depository institution approved under the Act, a federal-qualified issuer approved by the Office of the Comptroller of the Currency (the "OCC"), or a state-qualified issuer.[3]

The definitional scope is consequential. As the Treasury Department observed, not all stablecoins are payment stablecoins, and not all issuers of stablecoins are eligible to be PPSIs.[4] Stablecoins that sit outside GENIUS Act coverage, which we refer to as "non-qualifying stablecoins", fall into two categories:

- The first category includes stablecoins that meet the statutory definition of "payment stablecoin" but are not issued by a PPSI. Section 3(a) makes it unlawful for any person other than a PPSI to issue a payment stablecoin in the U.S., with criminal penalties of up to $1,000,000 per violation and up to five years' imprisonment, or both, for knowing participation.[5] Beginning three years after enactment, digital asset service providers may not offer or sell a payment stablecoin to a person in the U.S. unless a PPSI (or a foreign payment stablecoin issuer qualified under the Act) issued it.[6] The Act imposes statutory consequences from the Act's effective date with respect to payment stablecoins not issued by a PPSI and offered in the U.S.: they may not be treated as cash or a cash equivalent for accounting purposes; they are ineligible as cash-equivalent margin or collateral for futures

commission merchants, derivatives clearing organisations, broker-dealers, registered clearing agencies, and swap dealers; and they are not acceptable as a settlement asset for wholesale payments between banking organisations.[7] These prohibitions operate alongside, not in place of, otherwise applicable law: a payment stablecoin issued by a non-PPSI remains subject to the pre-GENIUS Act frameworks described in Part III, including state money transmission licensing, which the Act does not displace for issuers outside its framework.

- The second category includes stablecoins that fall outside the statutory definition of "payment stablecoin" altogether. Algorithmic (endogenously collateralised) tokens,[8] yield-bearing tokens,[9] crypto-collateralised synthetic dollars,[10] and tokens not redeemable 1:1 for a fixed amount of monetary value arguably do not meet the definition of "payment stablecoin" and are therefore not governed by the Act's framework at all.

Part II examines the scope of the GENIUS Act provisions. Part III analyses the U.S. law that continues to apply to non-qualifying stablecoins, including securities laws, money transmission and Bank Secrecy Act ("BSA") requirements, sanctions, and criminal exposure. Part IV analyses how the EU's Markets in Crypto-Assets Regulation ("MiCA")[11] treats the same designs. Part V compares the two regimes and identifies the perimeter gap they share. Part VI addresses practical risk considerations for market participants, and Part VII concludes with policy observations.

II. The GENIUS Act's scope and architecture

A. Scope of the Act

The Act reserves lawful issuance of a payment stablecoin in the U.S. to a PPSI, and allows a U.S.-formed issuer to qualify through either a federal or state pathway. The PPSI framework includes reserve, disclosure, supervision, anti-money laundering ("AML"), and other obligations. An issuer that does not satisfy the applicable issuer conditions cannot use the PPSI pathway. A token that does not meet the definition of "payment stablecoin" likewise falls outside the Act's scope.

The Act also prohibits a PPSI or foreign payment stablecoin issuer from paying interest or yield solely in connection with holding, using, or retaining a payment stablecoin, and prohibits marketing a product in the U.S. as a "payment stablecoin" unless it is issued pursuant to the Act.[12,13] These provisions do not bring an otherwise non-qualifying token within the Act's perimeter.

B. Foreign issuers

Because a PPSI must be formed in the U.S., a payment stablecoin issued by a foreign issuer is non-qualifying unless the issuer satisfies the requirements under Section 18 of the Act.[14] Until the Section 3(b)(1) bar takes effect in approximately July 2028, U.S. digital asset service providers may continue to list foreign-issued payment stablecoins without Section 18 qualification, although the Section 3(g) statutory consequences apply from the Act's effective date.[15] Section 18 exempts a foreign payment stablecoin issuer from the Section 3 prohibitions if, in substance: (i) the issuer is subject to regulation and supervision by a foreign regulator that the Treasury Secretary has found comparable to the GENIUS Act framework;[16] (ii) the issuer registers with the OCC; (iii) the issuer holds reserves in U.S. financial institutions sufficient to meet the liquidity demands of U.S. customers; and (iv) the issuer is not domiciled and regulated in a country subject to comprehensive U.S. sanctions or designated a jurisdiction of primary money laundering concern.[17] No comparability determination has been concluded as of this writing. Accordingly, no foreign-issued payment stablecoin presently qualifies for the Section 18 exception, and each would be treated as a non-qualifying stablecoin once the Act's prohibitions take effect.

Section 8 provides a related enforcement mechanism. A foreign issuer's stablecoin may not be offered or made available for trading in the U.S. by a digital asset service provider unless the issuer has the

technological capability to comply, and complies, with lawful orders to seize, freeze, burn, or prevent the transfer of its stablecoins. Treasury may designate a violating foreign issuer as non-compliant; if the issuer does not come into compliance within 30 days of written notice, Treasury publishes the determination in the Federal Register and prohibits digital asset service providers from facilitating secondary trading of the issuer's stablecoins.[18]

C. The Section 14 study and the transition timeline

Section 14 directs the Treasury Secretary, in consultation with other federal regulators, to study non-payment stablecoins, including endogenously collateralised designs, within one year of enactment.[19] The provision recognises that these designs sit outside the scope of the Act pending the study and any responsive legislation.

The Act takes effect on the earlier of 18 months after enactment (January 18, 2027) or 120 days after the primary federal regulators issue final implementing regulations; the exchange-access cutoff follows at the three-year mark.[20] As of this writing, many implementing regulations remain pending and are unlikely to be completed before January 18, 2027.

III. U.S. law governing non-qualifying stablecoins

Non-qualifying stablecoins are outside the scope of the GENIUS Act. However, that does not mean they are not subject to regulation. A non-qualifying stablecoin must be examined through the existing pre-GENIUS Act regulatory frameworks: the federal and state securities laws; state money transmission licensing regimes; the BSA; and relevant rules promulgated thereunder.[21]

A. Securities law

For non-qualifying stablecoins, the securities law inquiry remains dependent on the token's features and the circumstances of its offer and sale. In March 2026, the Securities and Exchange Commission (the "SEC") and the Commodity Futures Trading Commission ("CFTC") issued interpretive guidance addressing token categories and when a crypto-asset may be offered or sold pursuant to an investment contract and how it can separate from one.[22]

Stablecoins that do not fall under the release's stablecoin category (or a "covered stablecoin" under the SEC 2025 statement) may be classified as digital securities under the release. Examples include tokens bearing yield, algorithmic mechanisms, or investment-oriented marketing. Such stablecoins may constitute notes under the *Reves* test,[23] other types of securities, or be offered and sold subject to an investment contract under the *Howey* test.[24]

An April 2025 statement on stablecoins issued by SEC staff defined "covered stablecoins" (tokens pegged to and redeemable 1:1 for U.S. dollars, backed by low-risk and readily liquid reserves at least equal to redemption value, marketed solely for payments and value storage rather than as investments, and paying no interest or yield) and concluded they are not securities. The statement expressly does not address algorithmic tokens, yield-generating products, or non-USD-referencing tokens, and cautions that, where the facts differ, the Division's view as to whether a stablecoin is offered or sold as a security "may be different".[25]

Whether any stablecoin that falls outside of the perimeter of the GENIUS Act is a security depends on the features of the stablecoin and the facts and circumstances surrounding its offer and sale. Previously in 2023, the SEC brought suit against Terraform Labs and its founder for securities law violations involving TerraUSD ("UST"), an algorithmic stablecoin that was designed to maintain a 1:1 peg to the U.S. dollar by virtue of an algorithm tying its value to another crypto-asset, known as LUNA.[26] The SEC alleged that offers and sales of UST met all four prongs of the *Howey* test and was offered and sold as an investment contract. Specifically, Terraform Labs allegedly touted the profitability of the Anchor Protocol, a

programme that was launched by Terraform Labs, that it claimed would allow UST holders to earn nearly 20 per cent annual returns. In particular, the SEC alleged that over 70 per cent of circulating UST was deposited in the Anchor Protocol before the collapse of UST. In May 2022, mass redemptions forced hyperinflationary LUNA issuance; each wave of redemptions crushed LUNA's price, requiring ever-greater issuance to honour the dollar claim, and both LUNA and UST collapsed within days, erasing roughly $40 billion in market value.[27]

When ruling on the cross-motions for summary judgment in the case, Judge Jed Rakoff in the Southern District of New York concluded that there is no genuine dispute that UST offered and sold in combination with the Anchor Protocol constituted an investment contract.[28] In its earlier decision denying Terraform Labs' motion to dismiss the case, the court observed the Anchor Protocol functionally transformed UST into yield-bearing stablecoins that owners of UST could deposit in the Anchor Protocol to earn a share of the promised yield.[29] Further, the court also agreed with the SEC that after UST owners deposited their UST in the Anchor Protocol, these UST tokens were pooled together in the Anchor Protocol and were expected to generate profits that would then be redistributed to UST owners through the managerial efforts of Terraform Labs. In April 2024, following a jury trial, Terraform Labs and Do Kwon were found liable for securities fraud, and in June 2024 they consented to a final judgment requiring them to pay approximately $4.5 billion.[30]

B. Money transmission and the Bank Secrecy Act

Non-qualifying stablecoins remain subject to federal frameworks including money transmission and BSA requirements. Under longstanding Financial Crimes Enforcement Network ("FinCEN") guidance, a person that issues and redeems, or otherwise administers, value that substitutes for currency, including a stablecoin, is a money transmitter and thus a money services business, subject to BSA registration, an AML programme, recordkeeping, and suspicious activity reporting.[31] At the state level, an issuer outside the PPSI framework generally remains subject to state money-transmitter licensing, without the federal preemption or substantially similar harmonisation available to qualified issuers.[32]

State money transmission regimes commonly require licensure, often administered through the Nationwide Multistate Licensing System ("NMLS"), as well as minimum net worth, surety bonds, permissible investments, periodic reporting, and examination. More than half the states have adopted versions of the Conference of State Bank Supervisors ("CSBS") Money Transmission Modernization Act, but digital asset coverage and substantive obligations still vary, requiring a state-by-state analysis for non-qualifying stablecoin activity.[33]

New York and California illustrate two developed virtual currency regimes. New York requires a person engaged in "virtual currency business activity" involving New York or a New York resident – including issuing virtual currency – to hold a BitLicense or a limited-purpose trust company charter, and the New York State Department of Financial Services ("NYDFS") has imposed stablecoin-specific standards on regulated issuers, including segregated reserves, NYDFS-approved redemption policies, and monthly independent-accountant attestations.[34] California's Digital Financial Assets Law, whose licensing requirement became operative on July 1, 2026, would have prohibited exchanging, transferring, or storing a stablecoin unless the issuer held a licence or was a bank or trust company and maintained eligible securities with an aggregate market value at least equal to its outstanding stablecoins.[35] California repealed the stablecoin provisions of the law with effect from June 30, 2026, before they became operative, although the licensing requirement may still apply to non-qualifying tokens distributed to California residents.

C. Sanctions and criminal exposure

U.S. sanctions apply to transactions involving non-qualifying stablecoins. U.S. persons, including exchanges, custodians, and other intermediaries that handle non-qualifying tokens, are prohibited from dealing with sanctioned persons and jurisdictions and their property, and civil liability for sanctions violations is imposed on a strict-liability basis.

Administering a non-qualifying stablecoin without required federal registration or state money-transmitter licensing may also create criminal exposure. Operating an unlicensed money-transmitting business is a crime under 18 U.S.C. § 1960, and material misrepresentations about reserve backing or stabilisation mechanisms transmitted by interstate wire may support wire fraud charges under 18 U.S.C. § 1343.[36]

IV. The EU framework for non-qualifying stablecoins

A. MiCA's classification: e-money tokens and asset-referenced tokens

MiCA regulates stablecoins through two categories. An e-money token ("EMT") is a crypto-asset that purports to maintain a stable value by referencing the value of one official currency.[37] Only authorised credit institutions and electronic money institutions may issue EMTs; holders have a legal claim against the issuer and a right of redemption at par, at any time, in funds; and issuers may not grant interest (defined to include any remuneration or benefit related to the length of time a holder holds the token, whether from the issuer or a crypto-asset service provider ("CASP")).[38] An asset-referenced token ("ART") is a crypto-asset that is not an EMT and that purports to maintain a stable value by referencing any other value or right, or combination thereof, including baskets of currencies, commodities, or crypto-assets. ART issuers: require authorisation from a national competent authority; must maintain a segregated reserve of assets subject to composition, custody, and investment rules; must honour a permanent redemption right; may not grant interest; and bear liability, along with their management bodies, for the accuracy of the required white paper.[39]

B. Exclusion in operation: classification, enforcement, and delistings

MiCA reaches a comparable exclusionary result by a different route, though the mechanism is more nuanced. Classification under MiCA is asset-based and automatic: a crypto-asset that purports to maintain a stable value by referencing the value of one official currency is an EMT, and one that references any other value or right, or a combination, is an ART, in each case irrespective of whether its issuer is authorised. Recital 41 makes the test indifferent to engineering, so an algorithmic design that aims to stabilise value by referencing one or several assets is an ART or EMT notwithstanding its mechanism, while an algorithmic token that does not aim to stabilise its value by referencing assets falls instead to Title II, whose white paper and conduct obligations continue to apply. What MiCA prohibits is accordingly not the token's existence but two acts: under Articles 16(1) and 48(1), a person may not offer an ART or EMT to the public, or seek its admission to trading, in the EU unless that person is the issuer and is authorised (or acts with the issuer's written consent), which for EMTs means already being a licensed credit institution or electronic money institution. A person who performs neither act requires no authorisation at all. The substantive requirements then determine whether an issuer wishing to perform those acts may lawfully do so, and it is there that the designs examined here fail: an ART issuer must maintain a legally and operationally segregated reserve at least equal in value to the claims outstanding and invested in highly liquid, low-risk instruments, which endogenous or volatile collateral cannot satisfy, while an EMT issuer must be a licensed institution issuing at par against funds received, which an autonomous protocol cannot be. The exclusion is therefore one of market access rather than of classification: the token is not unauthorisable, since tokens are not the object of authorisation, but no one may lawfully bring it to the EU market.[40]

The leading enforcement precedent involves a crypto-collateralised design rather than a purely algorithmic one. Ethena's USDe is the crypto-collateralised synthetic dollar described in Part I;[41] its staked version, sUSDe, passes through staking rewards and derivatives funding income as yield. In March 2025, BaFin, the German federal financial supervisor, ordered Ethena GmbH to cease offering USDe to the public, classifying it as an ART and citing breaches of MiCA requirements, including those on the

reserve of assets and own funds, and separately flagging sUSDe as a potential security offered without a prospectus. Ethena subsequently wound down its German entity and exited the EU authorisation process.[42] The doctrinal significance is that classification follows what the token purports to do, and that reserve composition, not peg performance, then determines whether it can lawfully be offered: a token can hold its dollar peg in practice and still be one that no one may lawfully offer to the public, because its collateral is not a qualifying reserve.

Where the issuer is not authorised, MiCA's enforcement chokepoint is distribution. Articles 16(1) and 48(1) bar any person from offering to the public, or seeking the admission to trading of, an ART or EMT whose issuer is not authorised, and the European Commission's Q&A treats a platform that lists such a token as itself seeking its admission to trading, other CASP services falling to be assessed case by case; the restriction bites on the venue, not on holding the asset, and the European Securities and Markets Authority ("ESMA") and the European Commission put CASPs on transition timelines for delisting non-compliant tokens in January 2025.[43] What Title V does not reach is equally important: self-custody and decentralised finance ("DeFi") transfers remain outside MiCA's perimeter, so delisted tokens remain usable on decentralised exchanges and in self-hosted wallets – the same perimeter gap examined in Part V.

In an opinion of October 8, 2026, ESMA went well beyond its January 2025 statement, which had tied its guidance to CASP services that may amount to an offer to the public or an admission to trading and had accepted that "mere custody and transfer" of non-compliant tokens "should remain possible". The opinion presumes that providing any crypto-asset service in relation to a non-compliant token – custody and transfer included – breaches a CASP's duty under Article 66(1) to act in the best interests of its clients, whether or not the service is itself an offer to the public or an admission to trading.[44] ESMA expects national competent authorities to require any remaining exposures to be remediated within three months of the opinion, with any continuing services limited to selling, converting, transferring or withdrawing existing holdings.

ESMA's opinion arguably goes beyond what MiCA allows, since an issuer of an ART or EMT requires authorisation only where it offers the token to the public in the EU or seeks its admission to trading on a trading platform. An EMT referencing the official currency of a Member State is, however, deemed to be offered to the public in the EU. Beyond the rules on admission to trading, MiCA would appear to be silent on the crypto-assets in relation to which a CASP may provide its services, subject to the general duties of the CASP toward its clients under Article 66. The term "non-compliant" is itself something of a misnomer, since MiCA regulates the conduct of persons in relation to crypto-assets, and crypto-assets are themselves incapable of being compliant or otherwise. ESMA defines the term to cover any ART or EMT for which the conditions for a lawful offer to the public or admission to trading in the EU "are not met", which would appear to capture stablecoins that were not offered in the EU at all and whose issuers therefore did not require authorisation. ESMA's presumption under Article 66(1) therefore turns a duty about how a CASP treats its clients into a restriction on categories of tokens, which Title V does not appear to support. The restriction also extends beyond the prohibitions in Titles III and IV, which only apply to offers to the public and admissions to trading.

To compound the difficulty further, an opinion under Article 29 of the regulation establishing ESMA is not legally binding and does not amend MiCA; since it is also not a decision, it would not appear open to an appeal to ESMA's Board of Appeal or to an action for annulment. A CASP wishing to contest the opinion would therefore have to challenge a national measure based on it before a national court and ask for a reference to the Court of Justice.[45]

V. Comparative analysis

The two regimes of the U.S. and the EU converge on ends and diverge on means. The following table summarises the structural comparison as it bears on non-qualifying stablecoins:

Dimension	GENIUS Act (U.S.)	MiCA (EU)
Reserves	Prescriptive list: currency, insured deposits, ≤93-day Treasuries, overnight repos, government money market funds (§ 4(a)(1)(A)).	Rules-based: funds at credit institutions plus highly liquid, low-risk instruments (Articles 36–38, 54, Regulatory Technical Standards/Implementing Technical Standards).
Yield prohibition	§ 4(a)(11); binds PPSIs and foreign issuers.	Articles 40 (ARTs), 50 (EMTs); binds issuers and CASPs.
Algorithmic tokens	Outside the definition; § 14 study; existing law applies.	Classified as ARTs or EMTs; offer to the public and admission to trading barred.
Foreign issuers	§ 18 comparability exception; § 8 non-compliance designation.	No third-country equivalence regime; EU-authorised entity required.
Licensing	Dual federal/state track for PPSIs; 50-state money transmitter licence patchwork for issuers of non-qualifying payment stablecoins.	ART authorisation passports to all 27 Member States; EMT issuers must already be credit institutions or EMIs.
Distribution chokepoint	§ 3(b)(1) bar on non-PPSI payment stablecoins (~July 2028).	Articles 16(1), 48(1) bar where the issuer is not authorised.

The most consequential common feature is the perimeter gap, and in the U.S. it is codified rather than incidental. The GENIUS Act's definition of "digital asset service provider" expressly excludes distributed ledger protocols, developers and operators of self-custodial software interfaces, validators, and participants in liquidity pools, and Section 3(h) exempts direct peer-to-peer transfers between individuals and transactions through self-custody wallets from Section 3 altogether.[46] MiCA reaches the same place by a different route: it classifies assets automatically but addresses its prohibitions to persons, so that where no one offers or lists the token, and where no issuer can be identified at all, the obligations have no addressee; the offer and admission bars, together with the CASP regime, restrain the regulated venue while leaving peer-to-peer and DeFi channels untouched. The EU introduces friction at the edge of the gap: the Transfer of Funds Regulation imposes travel rule data requirements on all CASP-to-CASP crypto transfers with no *de minimis* threshold, and enhanced verification for transfers to and from self-hosted wallets exceeding EUR 1,000. But friction is not prohibition.[47]

VI. Considerations for market participants

A. Issuers

A non-qualifying issuer faces classification risk (securities or commodity treatment of the relevant stablecoin), licensing risk (Section 3(a) criminal exposure for issuing a payment stablecoin without PPSI status; and the state money transmitter licence patchwork for non-qualifying payment stablecoin issuers), and sanctions risk on a strict-liability basis. In the EU, the exposure is unauthorised-offering enforcement and, where the issuer also provides crypto-asset services without authorisation, listing on ESMA's register of non-compliant entities.

B. Exchanges and other intermediaries

Distribution of non-qualifying tokens carries direct exposure: violations are actioned under MiCA's Title VII in the EU today, and the Section 3(b)(1) bar in the U.S. beginning in 2028. Section 8 separately exposes a digital asset service provider to civil penalties of up to $100,000 per violation per day where it knowingly facilitates secondary trading in the stablecoin of a foreign issuer designated as non-compliant.

The predictable commercial response is preemptive delisting, as the European Economic Area ("EEA") experience shows, with the structural consequence that liquidity in excluded tokens migrates to offshore venues and DeFi protocols, concentrating smart contract, oracle, and liquidity-depth risk among remaining holders.

C. Institutional holders and counterparties

Section 3(g) resolves one accounting question by statute: a non-PPSI payment stablecoin may not be treated as cash or a cash equivalent. Meanwhile, classification of non-qualifying payment stablecoins under U.S. GAAP and IFRS remains unsettled.[48] Diligence on any non-qualifying token should address the risk of holding an unregistered security, sanctions screening of the issuer and associated wallets, continuity risk from the scheduled loss of regulated exit venues, and (for algorithmic designs without an issuer redemption obligation) the absence of contractual recourse in a de-pegging scenario. Advisers and fiduciaries should weigh these factors against PPSI-qualified alternatives under applicable prudence standards.

VII. Conclusion

The GENIUS Act and MiCA arrive at strikingly convergent destinations: 1:1 reserve backing, categorical yield prohibitions, and enforcement through regulated intermediaries as chokepoints. They diverge in architecture: the U.S. pairs an issuance prohibition with a fragmented residual regime for excluded tokens, while the EU classifies automatically and then bars the offer and admission to trading of tokens whose issuers are not authorised. They share the same three unfinished projects. First, neither regime reaches the self-custody and DeFi channel, which both have in effect codified out of scope; the excluded tokens' continued circulation there is a design feature of the current framework, not an oversight to be enforced away. Second, the foreign issuer question remains open: no Section 18 comparability determinations have been made, and as of July 2028, digital asset service providers will be prohibited from listing stablecoins issued by a foreign issuer that does not meet the Section 18 requirements. Third, both regimes defer the algorithmic question – the U.S. through the Section 14 study and the EU through automatic classification coupled with a bar on market access – and neither offers a supervised intermediate category in which novel stabilisation designs could operate under regulatory oversight.[49]

Three developments warrant close monitoring: Treasury's "substantially similar" determinations, which will define the practical scope of the state-qualified pathway; the Section 14 study and any legislative response on algorithmic designs; and the first Section 18 reciprocity rulemaking and comparability determinations, which will decide how a foreign issuer meets the relevant standards in order to offer payment stablecoins in the U.S. For issuers, intermediaries, and institutional holders alike, the message of both regimes is the same: the design features that once distinguished a stablecoin in the market (yield, novel collateral, algorithmic mechanics) are now the features that place it beyond the perimeter of the GENIUS Act and could, albeit controversially, keep it off regulated venues in the EU.

Endnotes

1 Pub. L. No. 119-27, 139 Stat. 419 (2025) (codified at 12 U.S.C. §§ 5901 *et seq.*).

2 GENIUS Act § 2(22), 12 U.S.C. § 5901(22). National currency, deposits (as defined in 12 U.S.C. § 1813), and securities are expressly excluded from the definition. *Id.* § 2(22)(B).

3 GENIUS Act § 2(23), 12 U.S.C. § 5901(23). The U.S.-formation requirement categorically forecloses foreign entities from PPSI status; foreign issuers may reach the U.S. market only through the Section 18 pathway discussed in Part II.B.

4 FinCEN and OFAC, Joint Notice of Proposed Rulemaking, Permitted Payment Stablecoin Issuer Anti-Money Laundering/Countering the Financing of Terrorism Program and Sanctions Compliance Program Requirements, 91 Fed. Reg. 18582, 18584 (Apr. 10, 2026).

5 GENIUS Act § 3(a), (f), 12 U.S.C. § 5902(a), (f).

6 GENIUS Act § 3(b)(1), 12 U.S.C. § 5902(b)(1). The prohibition is subject to limited Treasury safe harbours under Section 3(c).

7 GENIUS Act § 3(g), 12 U.S.C. § 5902(g).

8 Algorithmic (endogenously collateralised) tokens, such as TerraUSD ("UST"), maintain their peg not with off-chain reserve assets but through a programmatic mint-and-burn arbitrage system with a paired, free-floating token. In the case of UST, one UST was redeemable on-chain for $1.00 of newly minted LUNA (and $1.00 of LUNA could be burned to mint one UST), so that when UST traded below $1.00, arbitrageurs could buy UST, burn it for $1.00 of LUNA, and keep the spread, contracting UST supply and restoring the peg, with the reverse trade operating above $1.00.

9 Yield-bearing tokens merit a caveat: Section 4(a)(11) is a conduct bar on permitted payment stablecoin issuers rather than a carve-out to the definition of "payment stablecoin". A yield-bearing token falls outside Section 2(22) only if it independently fails a definitional limb, typically the stable-value limb where the token accrues or rebases, or falls within an exclusion such as that for securities; absent that, it would likely meet the definition of "payment stablecoin" and would fall under the first category of non-qualifying stablecoin.

10 Crypto-collateralised synthetic dollars, such as Ethena's USDe, are backed not by fiat reserves but by crypto collateral (bitcoin, ether, and liquid staking tokens such as stETH) paired with short perpetual-futures positions of equal notional value on the same assets, a delta-neutral hedge under which a decline in the collateral is offset by a gain on the short position, holding the portfolio's dollar value steady. USDe is intended to approximate one U.S. dollar, but users are not made a promise of its value and cannot redeem it for fiat currency.

11 Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets.

12 GENIUS Act § 4(a)(11), 12 U.S.C. § 5903(a)(11). Notably, the prohibition reaches foreign payment stablecoin issuers offering into the United States, not only PPSIs. *See supra* note 9.

13 GENIUS Act § 4(e)(3), 12 U.S.C. § 5903(e)(3).

14 GENIUS Act §§ 2(23), 18; *see supra* note 3.

15 GENIUS Act § 3(g), 12 U.S.C. § 5902(g).

16 The Secretary may make a non-U.S. comparability determination only upon the unanimous recommendation of the other members of the Stablecoin Certification Review Committee, comprising the Secretary of the Treasury, the Chair of the Board of Governors of the Federal Reserve System (or the Vice Chair for Supervision, as delegated), and the Chair of the Federal Deposit Insurance Corporation. *See* GENIUS Act §§ 2(27), 18(b)(1).

17 GENIUS Act § 18; *see* H. Comm. on Fin. Servs., Section-by-Section Summary of S. 1582 (July 10, 2025).

18 GENIUS Act § 8, 12 U.S.C. § 5907; *see also id*. § 2(16) (defining "lawful order"). Knowing violations carry civil penalties of up to $100,000 per day for the digital asset service provider and up to $1,000,000 per day for the foreign issuer, alongside injunctive authority, and designations are reviewable in the U.S. Court of Appeals for the District of Columbia Circuit. *Id*. § 8(b)–(c).

19 GENIUS Act § 14. The report was due by July 18, 2026 and had not been published as of this writing.

20 GENIUS Act § 20 (effective date); *id*. § 3(b)(1) (three-year distribution prohibition). The OCC proposed its implementing rule for federal-qualified issuers on March 2, 2026, and FinCEN and OFAC proposed the PPSI AML/CFT and sanctions programme rules on April 10, 2026. 91 Fed. Reg. 18582.

21 The GENIUS Act acknowledges this residual category: Section 14 directs Treasury, the Federal Reserve, the OCC, the FDIC, the SEC, and the CFTC to study "non-payment stablecoins, including endogenously collateralized payment stablecoins", within one year of enactment. GENIUS Act § 14.

22 Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, Securities Act Release No. 33-11412, Exchange Act Release No. 34-105020 (Mar. 17, 2026) (effective Mar. 23, 2026). The CFTC joined the release and confirmed that it will administer the Commodity Exchange Act consistently with the SEC's interpretation; the release does not reallocate jurisdiction between the agencies.

23 *Reves v. Ernst & Young*, 494 U.S. 56 (1990). Under *Reves*, a note is presumptively a security unless it bears a "family resemblance" to judicially recognised categories of non-security instruments, assessed by four factors: the motivations of buyer and seller; the plan of distribution; the reasonable expectations of the investing public; and the presence of an alternative regulatory regime that significantly reduces the risk of the instrument.

24 *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946). Under *Howey*, an "investment contract" (and therefore a security) exists where there is (i) an investment of money, (ii) in a common enterprise, (iii) with a reasonable expectation of profits, (iv) to be derived from the entrepreneurial or managerial efforts of others.

25 SEC Div. of Corp. Fin., Statement on Stablecoins (Apr. 4, 2025), nn.4, 5.

26 *See* Complaint, *SEC v. Terraform Labs Pte. Ltd. and Do Hyeong Kwon*, No. 23-cv-1346 (JSR) (S.D.N.Y. Feb. 16, 2023), ECF No. 1. In May 2022, UST de-pegged from the U.S. dollar, and its price plummeted to close to zero.

27 *See* Complaint, *SEC v. Terraform Labs Pte. Ltd.*, No. 1:23-cv-01346 (S.D.N.Y. Feb. 16, 2023).

28 *See SEC v. Terraform Labs Pte. Ltd. and Do Hyeong Kwon*, No. 1:23-cv-01346-JSR (S.D.N.Y. Dec. 28, 2023), ECF No. 149. The court also stated that it was "undisputed by the SEC[] that UST on its own was *not a security*". *Id.* at 38 (emphasis added).

29 *See SEC v. Terraform Labs Pte. Ltd. and Do Hyeong Kwon*, No. 1:23-cv-01346-JSR (S.D.N.Y. July 31, 2023), ECF No. 51.

30 *See SEC v. Terraform Labs Pte. Ltd. and Do Hyeong Kwon*, No. 1:23-cv-01346-JSR (S.D.N.Y. June 12, 2024), ECF No. 273 (final judgment on consent); SEC Press Release No. 2024-73 (June 13, 2024) (jury verdict of April 5, 2024).

31 FinCEN, Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies, FIN-2019-G001 (May 9, 2019); Kenneth A. Blanco, Director, FinCEN, Prepared Remarks at the Chainalysis Blockchain Symposium (Nov. 15, 2019); 31 U.S.C. § 5312(a)(2); 31 C.F.R. §§ 1010.100(ff), 1022.380.

32 *See, e.g.*, N.Y. Comp. Codes R. & Regs. tit. 23, pt. 200 (BitLicense); Cal. Digital Financial Assets Law, Cal. Fin. Code §§ 3101 *et seq*. Compare GENIUS Act § 5(h) (preemption for approved federal-track issuers).

33 *See* Conference of State Bank Supervisors, Money Transmission Modernization Act (2021) (model law adopted in a majority of states as of 2026).

34 N.Y. Comp. Codes R. & Regs. tit. 23, §§ 200.2(q), 200.3; NYDFS, Guidance on the Issuance of U.S. Dollar-Backed Stablecoins (June 8, 2022).

35 Cal. Fin. Code §§ 3101 *et seq*. (Division 1.25; licensing requirement operative July 1, 2026, as extended by A.B. 1934 (2024)); *id*. §§ 3601 *et seq*. (stablecoin provisions), repealed by S.B. 97, Stats. 2026, ch. 52, § 9, with effect from June 30, 2026; *see* Cal. Dep't of Fin. Prot. & Innovation, Digital Financial Assets Law FAQs (licence applications accepted through NMLS beginning March 9, 2026).

36 18 U.S.C. §§ 1343, 1960.

37 MiCA Article 3(1)(7); tit. IV (Articles 48–58).

38 MiCA Articles 48–49 (authorisation; issuance and redeemability), 50 (prohibition of granting interest).

39 MiCA Articles 3(1)(6), 16 (authorisation; a small-issuer exemption applies where average outstanding value does not exceed EUR 5,000,000 over 12 months, though the Article 19 white paper is still required), 26 (white paper liability), 36–39 (reserve of assets; redemption right), 40 (prohibition of granting interest).

40 MiCA recital 41; tits. III–IV (reserve requirements). *See also* European Commission, MiCA Q&A 2404 (Jan. 17, 2025); ESMA, Public Statement on the provision of certain crypto-asset services in relation to non-MiCA compliant ARTs and EMTs, ESMA75-223375936-6099 (Jan. 17, 2025).

41 *See supra* note 10.

42 BaFin, Ethena GmbH: BaFin prohibits new business with USDe token (Mar. 21, 2025, updated Apr. 24, 2025). The order also froze the reserve assets attributable to the German issuance.

43 MiCA tit. V (Articles 59–85); European Commission, MiCA Q&A 2404 (Jan. 17, 2025); ESMA, Public Statement, *supra* note 43; *see also* MiCA Articles 109–110 (ESMA's interim register, which lists authorised issuers and CASPs alongside non-compliant entities, a *de facto* EU-wide blacklist).

44 ESMA, Opinion on the provision of crypto asset services in relation to non-MiCA-compliant asset-referenced tokens and e-money tokens, ESMA75-113276571-1742 (Oct. 8, 2026), paras 7, 12 to 14, 21, 27; ESMA, Public Statement, *supra* note 43; MiCA Article 66(1).

45 MiCA Articles 16(1), 48(1), 48(2), 66; ESMA, Opinion, *supra* note 44, n.1; Regulation (EU) 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Articles 29(1)(a), 60(1); Case C-911/19, *Fédération bancaire française v. Autorité de contrôle prudentiel et de résolution*, judgment of July 15, 2021.

46 GENIUS Act §§ 2(7)(B), 3(h), 12 U.S.C. §§ 5901(7)(B), 5902(h).

47 Regulation (EU) 2023/1113 (Transfer of Funds Regulation) (applicable from Dec. 30, 2024); EBA Travel Rule Guidelines, EBA/GL/2024/11 (July 4, 2024).

48 GENIUS Act § 3(g)(1), 12 U.S.C. § 5902(g)(1).

49 For coordination mechanisms, *see* EBA-NYDFS Memorandum of Understanding on Supervisory Cooperation (June 2026); FATF Recommendation 16; FSB, High-Level Recommendations for Global Stablecoin Arrangements (2020, rev. 2023).



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